

09-04-01

GAU 1644 \$



255/013
Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#8 9/7/01
T. Bray

In re Application of:

GRAÇA RAPOSO, et al.

Serial No.: 09/582,340

Filed: November 23, 1999

For: COMPOSITIONS AND METHODS USING
LACTADHERIN OR VARIANTS THEREOF

Group Art Unit: 1644

Examiner: G. R. Ewoldt

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RESPONSE TRANSMITTAL

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

Submitted herewith is a Response to the Examiner's Restriction Requirement mailed on July 2, 2001. Applicants hereby petition for a ONE-MONTH extension of time in which to file the enclosed Response and enclose counsel's check in the amount of \$110.00 in payment of the fee required by 37 CFR 1.16.

The Commissioner is authorized to charge counsel's Deposit Account No. 12-2475 for any additional fees which may be required, and to credit any overpayments to the above-mentioned Deposit Account.

Respectfully submitted,

LYON & LYON LLP

By:

Patrick S. Eagleman
Reg. No. 44,665

Dated: August 31, 2001

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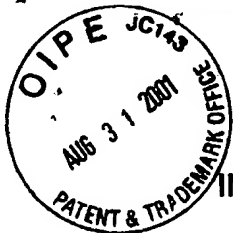
OC-90717.1

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Micheal A. Smith



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RESPONSE TO RESTRICTION REQUIREMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

Applicants respectfully traverse the restriction requirement of the Office action mailed July 2, 2001. Applicants first note that the national stage filing of a PCT application does proceed under the unity of invention rules stated in 37 CFR 1.475, see MPEP § 1893.03. The standard for unity of invention stated in the rules is that the claimed subject matter have a technical relationship among the matter involving one or more of the same corresponding special technical features which define a contribution that the invention, considered as a whole, makes over the prior art. Applicants submit that the invention in this case has not been considered as a whole, and that a special technical feature linking the matter claimed clearly is present in the use of lactadherin and its variants to alter immune responses in mammals. Such a use is a clear contribution over the prior art, especially the cited art which simply discloses a fragment of lactadherin. Focusing the mere inclusion of the protein lactadherin in the claims fails

OC-90429.1

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Micheal A. Smith
Micheal A. Smith

to consider the contribution of the invention as a whole, as is required by the Code. Thus, applicants submit that at least Groups I and II should be examined together in the instant application.

In addition, applicants note that 37 CFR 1.475(b) states that "An international or national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories: ... (4) a process and an apparatus or means specifically designed for carrying out the said process; ..." Here, at least Group III is drawn to compositions specifically designed for carrying out the process described in claims 1-5 and 7. Thus applicants request that the requirement of restriction among at least Groups I, II, and III be withdrawn.

If the restriction requirement is maintained, applicants elect Group II, claims 1, 3-5, and 7. Applicants reserve the right to prosecute non-elected claims in a later filed related application.

Respectfully submitted,

LYON & LYON LLP

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Patrick S. Eagleman
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Dated: August 31, 2001

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